

Application No. 10/750,860

### REMARKS

Applicant has carefully studied the outstanding Official Action mailed on September 9, 2005. This response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claims 1, 8, 11-13, 19, 20, 21 and 24 stand rejected under 35 USC §102(e) as being anticipated by Zubok et al. (US 6896676).

Claims 11 and 12 stand rejected under 35 USC §102(e) as being unpatentable over Zubok et al. (US 6896676) in view of Shinn et al. (US 5683465).

Applicant notes with gratitude that claims 22 and 23 have been indicated to be allowable if rewritten in independent form including the limitations of any base claims. Claims 22 and 23 have been accordingly rewritten in independent form including the limitations of the base claims.

Zubok et al. is described and constructed for use as a cervical disc replacement device. Zubok et al. uses elements 500 and 600 to attach the device to the spine structure above and below the disc. It is respectfully submitted that this attachment structure is different from the attachment structure of the present invention. It is believed the Examiner has correctly noted this difference by indicating claim 23 to be allowable. That claim distinguishes the attachment structure from the cited art in detailed language - "wherein said pedicle screw mounting members comprise rounded prongs."

The attachment structure of claim 23 enables attachment of the device of the present invention as a facet replacement prosthesis in the posterior portion of the spine. Accordingly, claim 1 has been amended to recite attachment structure for the posterior portion of the spine. It is respectfully submitted that this does not present matter for further search.

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Claims 8, 11, 13 and 19 have been amended to depend from claim 23. It is accordingly respectfully submitted that claims 1, 8, 11-13 and 19-24 are in a condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,  
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